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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 Case No. **C-08- 01337 MHP**

12 **MARK ANTOINE FOSTER,**  
13 **Plaintiff,**

14 **vs.**

15 **MORGAN LEWIS AND BOKIUS and**  
16 **ERIC MECKLEY, as an individual,**  
17 **and DOES 1 Through 81**

18 **Defendants**

**PLAINTIFF'S REPLY IN SUPPORT OF**  
**MOTION TO DISQUALIFY**  
**ATTORNEYS ERIC MECKLEY,**  
**MELINDA REICHERT, SUE BOAG, AND**  
**MORGAN LEWIS & BOKIUS OPPOSING**  
**DEFENDANT'S OPPOSITION; MEMO**  
**OF PTS & AUT; DECLARATION OF**  
**MARK ANTOINE FOSTER IN SUPPORT**  
**THEREOF AND EXHIBIT "A" THRU**  
**"B" ATTACHED THERETO**

**Date: April 28, 2008**

**Time: 2:00 p.m.**

**Location: Courtroom 15, 18<sup>th</sup> floor**

19 **I. Introduction**

20 Plaintiff MARK ANTOINE FOSTER hereby submits his reply to Defendant's  
21 Opposition to his motion to disqualify attorneys Eric Meckley, Melinda Reichert, Sue Boag and  
22 Morgan Lewis and Bokius LLP as opposing council against him in the above titled action.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24  
25 **PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISQUALIFY ATTORNEYS**  
**OPPOSING DEFENDANT'S OPPOSITION**

C- 08-01337 MHP

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## II. Rebuttal Argument

### Plaintiff's Response To Defendants' Argument

#### **A. MLB Is Not Entitled To Represent Itself In The Present Case Due to A Conflict Of Interest Created By Attorney Meckley's Breach Of Fiduciary Duty And Fraud And Intentional Deceit**

Plaintiff alleges that if a law firm's attorney engaged in a fraudulent act with his client to defraud a third party, that attorney has breached his fiduciary duty with that third party, and that attorney, as well as any other attorney employed by that firm should not be able to continue to represent that client, nor themselves against THAT THIRD PARTY in any continuing lawsuits.

Plaintiff is informed, believes and therefore alleges that where material facts are known to one party and not to the other, failure to disclose them is not actionable fraud unless there is some relationship between the parties which gives rise to a duty to disclose such known facts, and a duty to disclose facts where the party having knowledge of the facts in a fiduciary or a confidential relationship. A fiduciary or a confidential relationship exists whenever under the circumstances trust and confidence reasonably may be and is reposed by one person in the integrity and fidelity of another.

Plaintiff alleges that because Attorney Meckley suppressed the fact that the presented agreement's purpose was to wrongfully shield his client from a claim of wrongful termination and disability discrimination, he failed to disclose a fact he was obligated to disclose, to the court and to Plaintiff, and as an attorney, knowing it was going to unrightfully deprive Plaintiff of his property or any remedy in the form of monetary gain entitled to Plaintiff regarding his claims.

"The extent of liability an attorney may incur toward third persons, while the attorney is acting of behalf on a client, has been the subject of divergent opinion in various American

1 Jurisdictions, [\*\*\*10] the traditional view being that an attorney may not generally be held liable  
 2 to third persons because he is not in privity with them, and owes them no duty to act with care.  
 3 (See Attorneys Liability to Third Parties, 45 A.L.R. 3d 1177, 1181.) A typical statement of this  
 4 approach is that 'an attorney is not liable to third persons for acts committed in good faith in  
 5 performance of professional activities as an attorney for his client. If, however, an attorney is  
 6 actuated by malicious motives, or shares the illegal motives of his client, he may be personally  
 7 liable with the client for damage suffered by a third person as the result of the attorney's actions'  
 8 (Fns. Omitted) (7 Am. Jur.2d, Attorney's, § 196, p. 161 (1963).) (Roberts v. Ball, Hunt, Hart,  
 9 Brown & Baerwitz, supra 57 Cal App. 3d 104, 109.) Cicone v. URS Corp, 183 Cal. App.3d  
 10 194,227 Cal Rptr. 887; 1986 Cal. App. LEXUS 1804

11 Defendant Attorney Meckley knew he was construing to help carryout a scheme help  
 12 shield his client from Plaintiff's claim of wrongful termination and disability discrimination.  
 13 Defendant Attorney Meckley owed plaintiff a duty of care as an Attorney to uphold law and not  
 14 engage in a fraudulent activity he knew would deprive plaintiff of his rights. Plaintiff has  
 15 presented credible evident supporting his claims against defendant Attorney Meckley but can  
 16 also rely on res ipsa loquitur, as the acts of Defendant Attorney Meckley speaks for itself and  
 17 Plaintiff needs no other information to determine negligence.

18 If the Attorney's misconduct involved an illegal transaction, the court may consider as a  
 19 mitigating factor the fact that the Attorney was merely a "follower", rather than an instigator in  
 20 the transaction. The Court may also consider the fact that the transaction occurred in connection  
 21 with the Attorney's personal affairs, and that the Attorney did not stand to benefit personally  
 22 from the transaction [see in re Chira (1986) 42 cal 3d 904, 909, 231 Cal Rptr. 560, 727 P. 2d  
 23 753].

1 Plaintiff alleges that Defendant Attorney Meckley was an instigator not merely a  
2 "follower" in that he knew or had knowledge of the falsity of the document (VRA) and knew  
3 presenting it in the manner in which he did was deceitful, therefore there are no mitigating  
4 circumstances defendant Attorney Meckley can claim. Also Defendant Attorney Meckley's  
5 motive was to fraudently shield his employer from a wrongful termination claim, and impress his  
6 client and employer.

7 "An Attorneys presentation to court of statement of fact which is known to be false and  
8 which tends to mislead court violates this section, whether or not attorney is successful in  
9 misleading court, and intent to secure determination based on false statement is presumed.  
10 Vickers V. State Bar of Cal. (1948) 196 P.2d 10, 32 Cal 2d 247; Pickering V. State Bar of  
11 California (1944) 148 P.2d 1.24 Cal 2d 141.

12 Plaintiff alleges that defendant Meckley acts were intentional Fraud & Deceit, as he knew he  
13 was participating in a fraudulent Scheme, and as he had knowledge of the falsity and the fraud.  
14 Plaintiff alleges Attorney Meckley was negligent in his duties as an attorney.

15 Furthermore, Attorney Meckley and MLB should withdraw as council in this present case  
16 and case number C-08-1336, due to Plaintiff's alleged charges of Breach of Fiduciary Duty and  
17 Fraud against attorney Meckley and because he and MLB should refuse employment when the  
18 interests or the lawyer may impair his independent professional judgment, and because he may  
19 be called as a witness.

20 When charges are pending against a member, the member may opt to resign and  
21 relinquish the right to practice law and thus avoid the prospect of formal discipline [see Call  
22 Rules of Ct. Rule 9.21Ca]

23 The phrase "charges pending" means the member [Cal State Bar Rules Pro Rule 650]:

24  
25 PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISQUALIFY ATTORNEYS  
OPPOSING DEFENDANT'S OPPOSITION



- Is the subject of an investigation or a disciplinary proceeding;
- Is the subject of a criminal investigation or charge; or
- Has been convicted of a felony or misdemeanor

Plaintiff claims pending against Defendant Attorney Meckley establish that

(1) He is subject of an investigation or a disciplinary proceeding and

(2) He is subject of a criminal investigation or charge; and therefore should voluntarily withdrawn from this case

Pursuant to the ABA Disciplinary Rule (DR 5 – 101 Refusing Employment When the Interests of the Lawyer may impair his independent professional judgment

(A) Except with the consent of his client after full disclosure a lawyer shall not accept employment if the exercise of his professional judgment or behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify;

(1) If the testimony will relate solely to an uncontested matter

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client

CF. ABA Canons of Professional Ethics, Canon 6 (1908) and ABA opinion 181(1938) 104

(1934), 103, 72 (1932)

Pursuant to DR 5 – 102 withdrawal as counsel when the Lawyer becomes a witness

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any shall continue the representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5 – 101(b) (1) through (4)

(3) A conflict of interest has arisen between Plaintiff and Morgan Lewis & Bokius. Again it is unethical for any Attorney employed by Morgan Lewis & Bokius to act as council in this case and the case against Aramark for same reasons mentioned herein.

**B. Furthermore, It Is Not Undisputed That Neither MLB Nor Meckley Has Perpetrated A Fraud Against Plaintiff**

Defendants state in section D. on page 5 of their opposition in case number C-08-1336, “The alleged “fraud” consists solely of Defendants’ council serving a mediation brief on Plaintiff and a mediator attorney Bruce Highman in connection with the Bar Asc. Of San Francisco which parties were ordered to attend by the San Francisco Superior Court”

Plaintiff disagrees with this accusation, because first, the alleged fraud does not solely consist on Attorney Meckley serving the mediation brief on Plaintiff and the mediator, it was also served or presented to the State Bar and San Francisco Superior court, which is a tribunal. The Early Settlement Program is not merely sponsored by the State Bar and San Francisco Superior Court, it is also a court ordered program, governed by laws of the court, which makes it a tribunal. Therefore Attorney Meckley and his client Aramark presented a false document to the court.

1 Second, Plaintiff has alleged other facts to support his claims of fraud, such as, the  
2 knowledge of falsity, intent, circumstantial evidence and probability, among other things. The  
3 court only needs to look at Plaintiff's pleadings, those filed in this court as well as the ones filed  
4 in San Francisco Superior court.

5 Defendants continue by stating or implying what was in their mediation brief, regarding how  
6 Plaintiff voluntarily quit on his own because he signed and agreed to the VRA agreement entered  
7 into on March 28, 2006, and how Miller called him to remind him that he was scheduled to  
8 return to work on June 15, 2006 and that plaintiff admitted to never returning Miller's phone call,  
9 and because Plaintiff failed to return to work on June 15, 2006 he effectively resigned his  
10 position, and his employment with Aramark ended that same date, and that Plaintiff later  
11 confirmed his resignation in a signed writing and a true copy of it was attached as Exhibit 6.

12 Here Defendants want to present the notion that Plaintiff voluntarily resigned on his own, to  
13 imply that his resignation was not an involuntary resignation but a voluntary resignation, which  
14 is a false fact, in that it is fabricated and not founded in truth, and exists only in assertion and is a  
15 deceitful semblance of a fact.

16 Plaintiff alleges Aramark knew, and more importantly Attorney Meckley knew that because  
17 Plaintiff was terminated pursuant to the March 28, 06 agreement he was forced to quit due to his  
18 disability, and that it was not a voluntary resignation, but an involuntary resignation, and  
19 Plaintiff did not resign on his own or because he wanted to, but because he was forced to.

20 Defendants continue to state that the new VRA signed on or around May 7, 2007, and the  
21 original VRA signed on March 28, 2006 both prove that Plaintiff was not constructively  
22 discharged. Plaintiff alleges that this is another false fact, in that Defendants, as well as Attorney  
23 Meckley knows that neither agreement proves that Aramark did not constructively discharge  
24



1 Plaintiff, because they knew that plaintiff was constructively discharged on March 28, 2006  
2 when he requested and was forced to take medical leave because of the harassment and  
3 retaliation from Aramark, which constitutes being subjected to intolerable conditions at that time  
4 on March 28, 2006, not June 15, 2006. Plaintiff was disabled on June 15, 2006, and was under  
5 the care of his doctor, and the truth is at that time he was not being subjected to intolerable  
6 conditions on June 15, 2006 because he was not working there. Plaintiff alleges that he was  
7 subjected to disability discrimination and a wrongful termination on June 15, 2006, because  
8 Aramark and Attorney Meckley knew Plaintiff was disabled, and knew that he was not offered a  
9 reasonable accommodation, and knew they had not followed union connected procedures prior to  
10 terminating him. They also knew that the March 28, 06 VRA did not preempt Aramark from  
11 offering Plaintiff a reasonable accommodation to his disability, nor did it preempt Aramark from  
12 following union rules before deciding to terminate Plaintiff pursuant to the March 28, 06 VRA.

13 “To establish constructive discharge, a plaintiff needs to show that a reasonable would have  
14 found the conditions of her employ intolerable and that the employer either intended to force her  
15 to resign or could have reasonably foreseen she would do as a result of its actions”. *Odgen v.*  
16 *Waxworks*

17 “To have a valid claim of constructive discharge, an employee need not have completely  
18 resigned from the job. It is sufficient if the employee establishes that, because of intolerable  
19 conditions; he or she needed to remove himself or herself from the job (for example, by electing  
20 to go on disability retirement) and thus was effectively constructively discharged.” *Colores v.*  
21 *Board of Trustees of Cal. State University* (2003) 105 Cal App. 4<sup>th</sup> 1293, 1316-1318, 130 Cal  
22 Rptr. 2d 347

23 There is no argument based on the interpretation of the Voluntary Resignation Agreement(s),  
24

1 and there is no mistaken belief on Plaintiff's part that the Defendants presentation and  
 2 interpretation of the evidence is different, in that, it is the same, the only difference is that  
 3 Plaintiff is telling the whole truth and the Defendants are not. Both parties agree Plaintiff  
 4 resigned pursuant to the VRA Plaintiff signed on March 28, 06, but what the Defendants are not  
 5 revealing or admitting is that terminating Plaintiff pursuant to the March 28, 06 VRA was wrong,  
 6 and that is the sole purpose of the new VRA, to cover this fact up.

7 a) A Further Explanation of Attorney Meckley's Knowledge Of Falsity

- 8 1. Plaintiff alleges that if Aramark and Attorney Meckley is stating or implying that the  
 9 presentation of the new VRA in the mediation was just to confirm his client didn't  
 10 constructively discharged plaintiff on June 15, 2006, this is invalid because Plaintiff  
 11 constructive discharge occurred on March 28, 06, not June 15, 06. Plaintiff also  
 12 alleges that:
- 13 2. If Aramark and Attorney Meckley is stating or implying that the new VRA was just  
 14 to confirm Plaintiff resigned pursuant to the March 28, 06 VRA, this is invalid,  
 15 because the new VRA was not needed to confirm this fact as the March 28, 06  
 16 agreement already confirmed this fact
- 17 3. If Aramark and Attorney Meckley is stating or implying that the new VRA was to  
 18 confirm that Plaintiff was not constructively discharged on March 28, 06, this is  
 19 invalid because Plaintiff was constructively discharged on March 28, 06.

20 Therefore, Plaintiff alleges that neither the new VRA signed on or around May 7, 07, or the  
 21 March 28, 06 VRA proves Aramark did not constructively discharge Plaintiff.

22 Plaintiff alleges that if Attorney Meckley claims he had no knowledge as to how the new  
 23 VRA was obtained, he still had knowledge that Plaintiff was terminated pursuant to the March  
 24

28, 06 VRA (which he admits) and that his client terminated Plaintiff because he failed to return to work on June 15, 2006, (which he admits). Therefore Attorney Meckley knew his client has subjected Plaintiff to a wrongful termination and disability discrimination, and he knew the new VRA's purpose was to void-out the March 28, 06 agreement and/or to cover-up the fact that the terminating Plaintiff pursuant to the March 28, 06 VRA proved that Aramark's termination of Plaintiff was wrong, because it subjected Plaintiff to a wrongful termination and disability discrimination.

Plaintiff alleges that the new VRA was not to confirm that his client did not constructively discharge Plaintiff, nor was it to confirm that Plaintiff resigned to the March 28, 06 VRA, it was obtained to create the false fact that Plaintiff termination was a "voluntary quit" as opposed to it being an "involuntary quit", as his termination was an involuntary quit, because he was forced to resign because of his disability.

"A disabled claimant may bring suit under the California Fair Employment and Housing Act (FEHA) Gov. Code 12900 et seq. for employment discrimination Government Code 12940 subd.(a) can establish a prima facie case by proving that (1) he or she suffers from a disability; (2) he or she is a qualified individual; and (3) he or she was subjected to an adverse employment action because of the disability." Jensen v. Wells Fargo Bank 85 Cal App 4<sup>th</sup> 243, 102 Cal Rptr 2d 55 [Dec 2000]

"To prevail on a claim of unlawful discharge under the ADA the plaintiff must establish that he is a qualified individual with a disability and that the employer terminated him because of his disability." Copper v. Neiman Marcus Group, 125 F. 3d 786, 790 (1997) Humphrey v. Memorial Hospital ASSn. 239 F. 3d 1128 9<sup>th</sup> Cir 2001

Aramark and Attorney Meckley knew Plaintiff had been subjected to disability

1 discrimination, because they knew that 1) the only action Aramark initiated to secure Plaintiff's  
2 employment was Tim Miller calling Plaintiff to inform him that he was scheduled to return to  
3 work on June 15, 2006, which was not offering Plaintiff a reasonable accommodation; 2) they  
4 also knew Plaintiff was disabled on or around June 15, 2006, and 3) they knew Plaintiff's  
5 position was union connected, and Aramark terminated Plaintiff without adhering to union rules  
6 regarding terminating union employees, pursuant to the collective bargaining agreement  
7 Aramark had with the union, therefore they knew Plaintiff had been subject to a wrongful  
8 termination.

9 "American with Disabilities Act (ADA) does not require an employee to show that a leave of  
10 absence is certain or even likely to be successful to prove that it is a reasonable accommodation  
11 under the ADA." ADA of 1990 101(8) 42 U.S.C.A. 1211(8), Humphrey v. Memorial Hosp. Assn

12 "Once an employer becomes aware of the need for an accommodation of employees  
13 disability, the employer has a mandatory obligation under the ADA to engage in an interactive  
14 process with the employee to identify and implement appropriate reasonable accommodations."  
15 42 U.S.C.A. 12101 et seq.

16 Defendants, specifically James Chan and Vicki Litner, failed to engage in the interactive  
17 with plaintiff to identify any further possible reasonable accommodations for plaintiff's disability  
18 prior to terminating his employment.

19 "Employers who fail to engage in the interactive process with disabled employee to  
20 identify and implement appropriate reasonable accommodations in good faith face liability for  
21 the remedies imposed by the ADA if a reasonable accommodation would have been possible."

22 42 U.S.C.A 12101 et seq.

23 Defendants had an affirmative duty under the ADA and California Fair Employment and  
24



1 Housing Act to explore further arrangements to offer a reasonable accommodation for plaintiff  
2 before terminating him, although defendants had allowed plaintiff a disability leave, the  
3 accommodation was ineffective and a further accommodation would have been appropriate. See  
4 *Humphrey v. Memorial 1731* (6).

5 “Thus, the employer’s obligation to engage in the interactive process extends beyond the  
6 first attempt at accommodation and continues when the employee asks for a different  
7 accommodation or when the employer is aware that the initial accommodation is failing and  
8 further accommodation is needed. This rule fosters the framework of cooperative problem-  
9 solving contemplated by the ADA, by encouraging employers to seek to find accommodations  
10 that really work, and by avoiding the creation of a perverse incentive for employees to request  
11 the most drastic and burdensome accommodation possible out of fear that a lesser  
12 accommodation might be ineffective.” *Humphrey v. Memorial Hosp. Assn.*

13 Defendants Aramark Sports, L.L.C. and Aramark Corporation, failed to engage in the  
14 interactive process and it was their responsibility to offer plaintiff a further reasonable  
15 accommodation prior to terminating him. It was not plaintiff’s responsibility to request one  
16 before he was fired, it was the defendants’ responsibility to offer plaintiff a further  
17 accommodation due to defendants being under a continuing duty to offer a reasonable  
18 accommodation to a disabled employee. See *Huprhey v. Memor.*

19 Neither James Chan or Victoria Litner or anyone from Human Resources ever broached the  
20 subject of modifying plaintiff’s accommodation before terminating him. For example, plaintiff  
21 was never offered an extension of his leave or offered to place plaintiff in a vacate position in the  
22 reasonable future. SEE *Humphrey v. Metro*, 42 12111 (9) (A)(B)

23 Furthermore, if Aramark and Attorney Meckley are stating or implying that the new VRA  
24



1 was to confirm that Plaintiff was terminated pursuant to the March 28, 06 VRA , and that the  
2 March 28, 06 VRA justifies or gave Aramark the right to terminate Plaintiff because he signed  
3 and agreed to it thus terminating himself, this is invalid, because Aramark and Attorney Meckley  
4 knew that just because signed the March 28, 06 VRA, it did not give Aramark the right to  
5 terminate Plaintiff under the circumstances, specifically because Plaintiff was disabled on or  
6 around June 15, 06, and was not offered a reasonable accommodation, due to the fact that no one  
7 at Aramark engaged into an interactive process with Plaintiff to offer him a reasonable  
8 accommodation. Aramark and Attorney Meckley also knew Plaintiff was wrongfully terminated.

9 Plaintiff alleges that Aramark and Attorney Meckley knew terminating Plaintiff pursuant to  
10 the March 28, 06 VRA was wrong, plain and simple. So for Attorney Meckley and Aramark to  
11 present the new VRA to show or imply that Plaintiff's termination was voluntary - because he  
12 elected to terminate himself because he signed the March 28, 06 VRA, is a misrepresentation of  
13 material fact and a false fact, made with the intent to defraud.

14 Plaintiff alleges that Aramark and Attorney Meckley knew these facts because they had the  
15 evidence to know, and that's why they proactively tried to cover it up, and they are still trying to  
16 cover it up.

17 Furthermore, Plaintiff alleges that Attorney Meckley excuse for presenting the new VRA in  
18 the mediation is not a plausible excuse or answer, as it may appear to be. His purpose is to shield  
19 the fact that he himself engaged in a fraudulent misrepresentation with his client Aramark. His  
20 answer is invalid, as he knows a constructive discharge by law occurs when an employee is  
21 subject to intolerable conditions and is forced to resign by either quitting or taken a medical  
22 leave. Aramark and Attorney Meckley is stretching the meaning of a constructive discharge to fit  
23 in their reality and definition so they can claim they had no intention of defrauding Plaintiff of  
24

1 his disability discrimination and wrongful termination claims. Aramark and Attorney Meckley is  
2 trying to instruct or lead this court to believe as to what a constructive discharge is and that their  
3 reasoning for them presenting the new VRA is sound based on their constructive discharge  
4 notion. It is clear that Attorney Meckley and Aramark have never, till present, addressed the  
5 issue of wrongful termination and disability discrimination, which they accuse Plaintiff of  
6 rambling on about. Why not address it and be done with it? Plaintiff believes that if Attorney  
7 Meckley and Aramark can persuade this court to see things their way with false facts and  
8 twisting the law, then he and Aramark can shield himself and get "off the hook". There are many  
9 claims against the Defendants, and the validity of Plaintiff's claims rests primarily on the two  
10 agreements, and their purpose.

11 It is clear and undisputed that 1) the new VRA was not needed by Aramark or Attorney  
12 Meckley, as the March 28, 06 VRA would have sufficed, and 2) the new VRA was in question  
13 from the outset, not only by Plaintiff, but his worker's compensation attorney, Mary Lou  
14 Williams, and 3) the language used to obtain it constituted coercion by Aramark and the Law  
15 Offices of Gray and Prouty, and 4) there was no need for the Law Offices of Gray and Prouty to  
16 present the new VRA to Plaintiff after Plaintiff had already not been employed by Aramark for  
17 over a year, and also because Gray and Prouty was not connected to the wrongful termination  
18 and disability discrimination situation and had already agreed to settle the worker's  
19 compensation case with Plaintiff, and 5) the document showed up somewhere, ( in the  
20 mediation) as Plaintiff expected that it would after he discovered the disability discrimination  
21 and wrongful termination and the cover-up.

22 Attached to the Declaration of Mark Antoine Foster as Exhibit "A" is a true and correct copy  
23 of the correspondence between Foster and his worker's compensation attorney Mary Lou  
24

1 Williams, evidencing the states of mind as to the suspiciousness of the new VRA

2 Attached to the Declaration of Mark Antoine Foster as Exhibit "B" is a true and correct copy  
3 of the Plaintiff's lawsuit against Gray and Prouty. Plaintiff amended the lawsuit to dismiss the  
4 federal claims and redefine his fraud claims.

5 **C. Plaintiff May Lack Standing To Move To Disqualify MLB And Its Attorneys**  
6 **Based On Any Alleged Conflict Of Interest, But Only In The Traditional Sense, Not In The**  
7 **Present Case, Due To Attorney Meckley's Breach Of Fiduciary Duty and Fraud And**  
8 **Intentional Deceit**

9 Defendants state in section B. on page 3 of their opposition that "Generally, only clients  
10 and former clients of the attorneys at issue have standing to bring a disqualification motion based  
11 on a conflict of interest".

12 Plaintiff alleges that Defendants are correct, although the key word is "generally", and  
13 the problem here is that Attorney Meckley denies that he has committed fraud and a breach of  
14 fiduciary duty against plaintiff, and the fact that he even owes Plaintiff a duty, and based on this  
15 denial, he depends on law as a defense that he is not entitled to. In Plaintiff's complaint against  
16 MLB and Eric Meckley as an individual, Plaintiff alleges fraud and intentional deceit and breach  
17 of fiduciary duty, which as a result has created a conflict of interest between him and MLB.

18 Plaintiff alleges that Attorney Meckley has created a conflict of interest because he has  
19 breached his fiduciary duty as an attorney when he presented a known fraudulent document to  
20 the court and to plaintiff, as he preserved and presented the document in behalf of his client,  
21 knowing it was to deprive Plaintiff of a wrongful termination and disability discrimination claim.

22 "It was a grave breach of Professional Ethics on part of claimant's Attorney's to present  
23 expert testimony knowing or suspecting it to be false and misleading in the absence of full  
24

disclosure of the manner in which test of allegedly defectively designed winch was conducted.”  
 Xanadu Maritime Trust V. Meyer N.D. CAL 1998, 21 F. Supp 2d. 1104.

Plaintiff alleges that Defendant Meckley motive was to please his client and impress his employer, as he overreached to accomplish this.

Plaintiff alleges and acknowledges that he can't move to disqualify in the traditional sense, as to what a conflict of interest is, as mentioned herein. Plaintiff is simply saying that because he reasonably believes that Attorney Meckley and his client has committed a wrong against him, and in light of the circumstances neither Attorney Meckley or any of MLB attorneys should be representing council for themselves, nor Aramark against Plaintiff. Plaintiff feels totally uncomfortable pleading his claims of fraud and breach of fiduciary duty against the attorneys whom is has alleged these claims against. It would be unethical to allow them to act as council against Plaintiff. Plaintiff alleges that Attorney Meckley has already breach his fiduciary duty as an attorney against him and does not trust Attorney Meckley nor any of the attorneys employed at MLB.

**D. Plaintiff Does Not Lack Standing To Move To Disqualify MLB And Its Attorneys Based On The Possibility That Meckley May Be Called As A Witness In Any Of Plaintiff's Lawsuits, Because It Is Possible He May Be Called As A Witness In His Lawsuits**

Again, Defendants deny that they have committed fraud and intentional deceit and a breach of fiduciary duty against Plaintiff, and their defense is based on that denial. There can be and is a conflict of interest between the third party and the opposing attorney in this present case.

“ In California it is well established that an attorney may not, with impunity, either conspire with a client to defraud or injure a third person or engage in intentional tortious conduct toward a third person” Cicone v. URS Corp, 183 Cal. App. 3d 194, 227 Cal Rptr. 887;1986 Cal. App.



1 LEXUS 1804 (1986)

2 “Thus the case law is clear that a duty is owed by an attorney not to defraud another, even if  
3 that other is an attorney negotiating at arm’s length.” *Cicone v. URS Corp*, 183 Cal. App. 3d  
4 194, 227 Cal Rptr. 887; 1986 Cal. App. LEXUS 1804 (1986)

5 **E. Disqualification Would Not Be Inappropriate In The Present Case**

6 Plaintiff reiterates, he is not using his motion to disqualify as a strategic purpose, maybe  
7 this is something Attorney Meckley would do, not Plaintiff, and he does not have to. Attorney  
8 Reichert claims that a disqualification would pose an undue hardship on her innocent client who  
9 must bear the costs of finding another attorney. Plaintiff alleges that her client is far from  
10 innocent and far from being subjected to a financial hardship, as they are a 6 billion dollar  
11 corporation..

12 **CONCLUSION**

13 Plaintiff prays that this court disqualify the attorneys mentioned in this motion in the face  
14 of the evidence and the fact that the attorneys have had a whole year to produce a credible  
15 defense, but has only mounted an ineffective campaign, with a lack of creditable statements and  
16 paper trials that lead nowhere, and have only resorted to tactics to mislead the court and  
17 Plaintiff. Defendants have also attempted to discredit Plaintiff in so many ways, as Plaintiff  
18 expects more of the same twists, turns and tricky maneuvers.

19 Plaintiff alleges that it must be difficult for Defendants to have Plaintiff mount these  
20 strong overwhelming claims, as he is *Pro Per*, a African American and a “cook coming out of  
21 the kitchen” to defend his name and honor against these attacks on his freedom, his right to work  
22 without harassment and retaliation, and their attacks on his character. Plaintiff prays that the  
23 court saves the public, the court system and him the untruths and lies continually being presented



1 to this court.

2 Plaintiff's motion to disqualify should be granted, and Plaintiff should not be subjected to  
3 a sua sponte issue to show cause why he should not be sanctioned under rule 11 for filing his this  
4 motion.

5 Dated: April 15, 2008

  
Mark Antoine Foster, In Pro Per

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PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISQUALIFY ATTORNEYS  
OPPOSING DEFENDANT'S OPPOSITION

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